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SERVICE DATE – OCTOBER 3, 2005

SURFACE TRANSPORTATION BOARD

DECISION AND NOTICE OF INTERIM TRAIL USE OR ABANDONMENT

STB Docket No. AB-103 (Sub-No. 18X)

THE KANSAS CITY SOUTHERN RAILWAY COMPANY—ABANDONMENT
EXEMPTION—IN WINN PARISH, LA

Decided: September 30, 2005

The Kansas City Southern Railway Company (KCSR) filed a notice of exemption under 49 CFR 1152 Subpart F—Exempt Abandonments to abandon a 3.16-mile line of railroad extending from milepost 144.64 to milepost 147.80, located near Winnfield, in Winn Parish, LA. Notice of the exemption was served and published in the Federal Register on September 2, 2005 (70 FR 52483-84). The exemption is scheduled to become effective on October 4, 2005.

The Board's Section of Environmental Analysis (SEA) served an environmental assessment (EA) in the proceeding on September 9, 2005, setting forth environmental concerns and recommending that conditions be imposed on any decision granting abandonment authority. In the EA, SEA notes that the National Geodetic Survey (NGS) has identified two geodetic station markers that may be affected by the proposed abandonment. Therefore, SEA recommends that KCSR provide NGS with at least 90 days' notice prior to initiation of any salvage activities that may disturb or destroy the geodetic station markers so that plans can be made for their relocation (Condition 1).

SEA also states in the EA that the U.S. Fish and Wildlife Service, Louisiana Field Office, has indicated that the proposed abandonment could impact wetlands. SEA further notes that, according to KCSR, the line proposed for abandonment passes through the 100-year floodplain of two creeks. Therefore, SEA recommends that KCSR consult with the U.S. Army Corps of Engineers, Vicksburg District (Corps), and report the results of these consultations in writing to SEA prior to the commencement of any salvage activities (Condition 2). To ensure that the 100-year floodplain is not adversely affected, SEA also recommends that KCSR consult with the local Floodplain Administrator, Mr. Timothy Howell, at (318) 628-6342, regarding the potential impacts to the 100-year floodplain, comply with the reasonable requirements of the Floodplain Administrator to mitigate any potential impacts prior to the commencement of any salvage activities, and report the results of these consultations in writing to SEA prior to the commencement of any salvage activities (Condition 3).

Finally, SEA notes in the EA that the Louisiana Office of Historic Preservation (SHPO) has not yet completed its evaluation of the potential impact of the project on historic resources.

Therefore, SEA recommends that KCSR retain its interest in and take no steps to alter the historic integrity of the line and all sites and structures on the line that are 50 years old or older, until completion of the section 106 process of the National Historic Preservation Act, 16 U.S.C. 470f, and report to SEA the results of any consultations with the SHPO (Condition 4).

Comments to the EA were due by September 26, 2005. Based on the comments received, SEA has modified its recommendations. In a letter dated August 11, 2005, KCSR states that the proposed abandonment would have no effect on the geodetic station markers. NGS confirms that the proposed abandonment will not endanger any geodetic control marks and that NGS has no objection to immediate salvage activities. Accordingly, SEA no longer recommends Condition 1.

In a letter dated July 25, 2005, the SHPO indicates that it has completed its review of the proposed abandonment and has determined that no historic resources would be affected by the proposed project. SEA, after reviewing the report, concurs with the SHPO and has determined that the Board's responsibilities under section 106 are fulfilled. Accordingly, SEA no longer recommends that a section 106 condition (Condition 4) be imposed.

In a letter dated September 26, 2005, KCSR states that it has consulted with Mr. Ken Moseley at the Corps. According to Mr. Moseley, a section 404 permit would be required if the abandonment involved construction outside of the right-of-way, such as access roads or staging or storage areas for materials or equipment. Because KCSR does not plan any such construction outside the right-of-way, Mr. Moseley indicated that he did not anticipate any need for a section 404 permit. Accordingly, SEA no longer recommends Condition 2.

The recommended environmental conditions in the EA have been modified by SEA based on the comments received. SEA now recommends that only the consultation condition with the local Floodplain Administrator (Condition 3) be imposed. Based on SEA's revised recommendation, the proposed abandonment, if implemented as conditioned, will not significantly affect either the quality of the human environment or the conservation of energy resources.

On September 7, 2005, L&A Trail, Inc. (L&A), filed a request for the issuance of a notice of interim trail use (NITU) for the line pursuant to section 8(d) of the National Trails System Act, 16 U.S.C. 1247(d), and 49 CFR 1152.29. L&A has submitted a statement of willingness to assume financial responsibility for the management of, for any legal liability arising out of the transfer or use of (unless the user is immune from liability, in which case it need only indemnify the railroad against any potential liability), and for the payment of any and all taxes that may be levied or assessed against, the right-of-way, as required at 49 CFR 1152.29, and has acknowledged that the use of the right-of-way for trail purposes is subject to future reactivation for rail service. In a response filed on September 7, 2005, KCSR states that it is willing to negotiate with L&A for interim trail use.

Because L&A's request complies with the requirements of 49 CFR 1152.29 and KCSR is willing to negotiate for trail use, a NITU will be issued. The parties may negotiate an agreement during the 180-day period prescribed below. If the parties reach a mutually acceptable final agreement, no further Board action is necessary. If no agreement is reached within 180 days, KCSR may fully abandon the line subject to any outstanding conditions. See 49 CFR 1152.29(d)(1). Use of the right-of-way for trail purposes is subject to restoration for railroad purposes.

It is ordered:

1. This proceeding is reopened.
2. Upon reconsideration, the notice served and published in the Federal Register on September 2, 2005, exempting the abandonment of the line described above is modified to the extent necessary to implement interim trail use/rail banking for a period of 180 days from the service date of this decision and notice (until April 1, 2006), and subject to the condition that KCSR shall consult with the local Floodplain Administrator, Mr. Timothy Howell, at (318) 628-6342, regarding the potential impacts to the 100-year floodplain, comply with the reasonable requirements of the Floodplain Administrator to mitigate any potential impacts prior to commencement of any salvage activities, and report the results of these consultations in writing to SEA prior to the commencement of salvage activities.
3. If an interim trail use/rail banking agreement is reached, it must require the trail user to assume, for the term of the agreement, full responsibility for management of, for any legal liability arising out of the transfer or use of (unless the user is immune from liability, in which case it need only indemnify the railroad against any potential liability), and for the payment of any and all taxes that may be levied or assessed against, the right-of-way.
4. Interim trail use/rail banking is subject to the future restoration of rail service and to the user's continuing to meet the financial obligations for the right-of-way.
5. If interim trail use is implemented, and subsequently the user intends to terminate trail use, it must send the Board a copy of this decision and notice and request that it be vacated on a specified date.
6. If an agreement for interim trail use/rail banking is reached by April 1, 2006, interim trail use may be implemented. If no agreement is reached by that time, KCSR may fully abandon the line provided the other conditions imposed in this proceeding are met. See 49 CFR 1152.29(d)(1).

7. This decision is effective on its service date.

By the Board, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams
Secretary